



ABROGATION OF ARTICLE 370 OF THE CONSTITUTION OF INDIA

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ABSTRACT

Article 370 has been the subject of heated debate ever since it was first proposed. There is no other article of the Indian Constitution that has elicited as much interest and passion in the mind of the common Indian as Article 370 of the Constitution. The debate on this topic ranges from highly technical to highly emotional ones, depending on who is speaking. The matter at hand is not only legal or constitutional in nature, but also incorporates political dimensions of enormous proportions as well. In a way that makes the problem incredibly complex, both are intricately intertwined with one another. Moreover, the ramifications and impact of this Article on India's Constitution as well as the politics of this subcontinent must be fully understood by the public. The Indian Constitution is more than just a legislative framework intended to accommodate clashing political viewpoints from a bygone era. It is also a social contract. A thriving democracy like ours is deserving of more. In an ideal world, the constitution would reflect the ambitions, aspirations, and ideals of the people who drafted it, not the other way around. In order to assess its character and vitality, it must be appraised on the basis of the honesty and efficacy with which it infuses and enforces these elements. This article is an attempt to investigate the origins of this Article and to determine the amount to which it reflects the values, hope, and aspiration of the typical Indian, as well as the extent to which it is actually achieving the goals for which it was originally intended. In addition, the study attempts to investigate the nature of this article in both its constitutional and legal dimensions, as well as to demonstrate the impact it has on the fundamental structural integrity of our constitution, among other things. In both the country and among constitutional scholars, there is a major division in opinion on whether Article 370 should be retained or scrapped. The amount to which one understands the true nature of the situation determines the answer to this question. The purpose of this study is to make a little contribution to that understanding.

KEYWORDS: Article 370, India, Indian Constitution.

INTRODUCTION:

Article 370 of the Indian constitution has gotten the most attention, sparked the most debate, and sparked the most passion in the minds of ordinary Indians. This topic has a plethora of material to choose from, ranging from extremely technical to profoundly emotive. Nationalists hold one end of the spectrum, while Kashmiri intellectuals and opinion makers hold the other. The issue that emerges from the great literature on the subject is not merely legal or constitutional in character, but also has enormous political implications. All of the aspects are so tightly entwined with one another that discerning their impact and consequences on the Indian constitution as well as the politics of the subcontinent necessitates a great deal of focus and vigilance.

When discussing this problem in its constitutional context, it is important to remember that the Indian Constitution is more than just a legal framework designed to accommodate different political viewpoints from a bygone era. Better is due to a lively democracy like ours. A constitution should, in theory, embody the ambitions, aspirations, and ideals of those who write it. The honesty and efficacy with which it imbues and enforces these characteristics must be used to assess its character and vitality.

Let us examine to what extent Article-370 of the Indian constitution represents the values, hopes, and aspirations of the people of India and the valley, and to what extent it is actually delivering the objectives for which it was created in the first place, without undermining the enormity of the task of safeguarding freedom while maintaining order.

CONSTITUTIONALITY:

If only an objective and impartial viewpoint is used to determine the legal position of Article 370, it becomes clear that it is a self-executing article that functions ex proprio vigore without requiring the application of any other article of the Indian Constitution. 40 However, if the constitutionality of the provisions of Article 370 is viewed through the lens of constitutional ethics, we cannot blame the school of constitutional experts who believe that the provisions of Article 370, among other things, are destroying the fundamental structure of the Indian Constitution. The formation of a separate Constituent Assembly for the state of Jammu and Kashmir is permitted under Article 370 (2). In India, no other state has been granted this right in the same way. In an ideal world, constitutional philosophy, constitutional morality, and constitutional politics would dictate that a sovereign country have only one Constituent Assembly with absolute power to write a single Constitution for its whole sovereign territory. Making the deletion, abrogation, and alteration of Article 370 subject to the proposal of the Constituent Assembly of Jammu and Kashmir means that the Indian Constitution has delegated the right to make amendments and modifications to an independent authority. No other state legislative venue in the country has such parallel authority and stature. Article 370 suffers from the default of "basic structural theory" for this reason.

The first sentence of the article reads, "Notwithstanding anything in this Constitution." In the rest of the Constitutional text, this preamble appears just a few times. The aforementioned remark has the effect of removing Kashmir outside the range of basic principles established in the constitution's preamble, as well as the legislative and judicial reach of its institutions.

ABROGATION OF ARTICLE 370:

More than the reasons given above, which are primarily technical in character, a large portion of the public opinion on the matter believes that Article 370 should be repealed immediately since its continuous existence prevents Kashmir's absorption into the national mainstream. 65 It is frequently said that it is the primary source of Kashmir's alienation and isolation, providing room and food for secessionist and fissiparous tendencies. It is, however, a mistake to view Article 370 as the source of all issues. Article 370 is simply a channel for measures that are antithetical to the Indian constitution to reach the state. This article did not have any of the antagonistic aspects. It was merely a passageway for them. It is no longer their home. They have already spilled over, migrated, and made their way into several Presidential Constitution Orders, Appendix I and II of the Government of India book titled "The Constitution of India," and, most importantly, as various laws and enactments of the State Constitution itself. The assumption that destroying the shell after the snake has climbed out will solve the problem is naive. Furthermore, it would be incorrect to conclude that Article 370 has served its purpose and is no longer valuable to India. The Article's Clauses (1) (b), (c), (d), and (3) are still powerful clauses via which the President of India exercises significant constitutional and executive control over Kashmir. In the absence of a better political atmosphere and the level of trust and understanding required between the political dispensations in India and Kashmir, substantial amendments (if not complete redrafting) of the state constitution and many state enactments violating the basic tenets of the Indian Constitution, despite its flaws, Article 370 remains in place.

CONCLUSION:

In the history of a nation, opportunities come but rare when destiny and fate of its people can be given a positive shape and direction. Constituent assembly was one such historical window of opportunity made available to the political leaders of that time to take care, resolve and channelize the legitimate desire and aspirations for self rule of Kashmiri people in a direction that was constructive, equitable and fair. Alas, this momentous opportunity was lost. Dr Ambedkar is on record to have said to the Kashmiri delegates in no uncertain terms "Mr Abdullah, you want that India should defend Kashmir, India should develop Kashmir and Kashmiris should have equal rights in India, but you don't want India and any citizen of India to have any right in Kashmir. I am the Law Minister of India. I cannot betray the interest of my country." 68 Perhaps, a greater resolve and firmness, as displayed in case of other deviant states specially the kind shown in respect of Nizam of Hyderabad and Nawab of Junagarh could have nipped the problem in the bud. Unfortunately, the realism of Dr Ambedkar and firmness of Sardar Patel did not make any dent in the bastions of "Nehruvian ide-

alism” and his abundant benevolence towards Mr Abdullah. This allowed things to drift and the greatest political blunder of the century in India was committed. The current generation is paying a heavy price for it today. As the lid of the “Pandora's Box” was left open, veritable worms crawled out of it. Separatism, extremism, fundamentalism, extra territorial loyalties and demagoguery are but few. Once the power of these forces were unleashed in the valley, fanned and fuelled by cross border elements, it now requires much greater political resolve and sagacity to rein them back. Unfortunately, these are still found deficit in our politics.

It is doubtful if an abrupt abrogation of Article 370 can solve the problem. It will be like getting rid of the cobweb leaving the spider behind. It must be understood that Article 370 is not the problem; it is a symptom, a manifestation, a product of a problem. First the reasons have to be removed. Kashmiri people know it well that their political as well as economic well being lies with India. What they ought to know is that federal character of Indian constitution is intrinsically symmetrical in nature. Asymmetrical relationship forced upon it by Kashmir leaders has vitiated the atmosphere and retarded their own politico-economic growth and development. Kashmiri leaders have tried to give Kashmir the status of a mistress in their own house. In a fair and just system, members must aspire for equality not special status, for empowerment not unrestricted autonomy. Among many, if one member tries to be more equal than others, it disturbs the equilibrium. The beautiful framework of Indian constitution allows the states and its citizens to enjoy liberty, individual rights and enough safeguards to preserve and develop one's own culture, heritage, religion and identity with full dignity. Kashmiri leadership have to get over their misplaced phobia about Indian Parliament going all out to rob them of their liberty and destroy their identity, culture and religion. If such a thing has not happened to the people of twenty eight states, seven union territories and host of other minority groups of India in the last 65 years of its existence, there is no reason to suspect that such a threat exists today. Political class of Kashmir is required to mature and be convinced about these things. A new class of moderate, progressive leadership in Kashmir will have to come up. Favourable conditions have to be created through a process of more vigorous and constructive political engagement, administrative efficiency and equitable economic growth. Development is the right antidote for fundamentalism, militancy and extremism. In due course, Article 370 must go. Not through unconstitutional means but through the process already inherent in Clause (3) of the same Article.

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